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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 UNITED STATES OF AMERICA,

Case No. 2:99-cr-0331-RFB

7 Plaintiff,

8 v.

ORDER

9 HENRY AMARILLAS,

On Motion to Vacate

10 Defendant.
11

12 On December 13, 2016, Amarillas filed the instant motion to vacate, set aside, or
13 correct his sentence pursuant to 28 U.S.C. § 2255. ECF. No. 48. In his motion, Amarillas
14 contends that he is entitled to resentencing in light of Johnson v. United States, 135 S. Ct. 2551
15 (2015). Specifically, he contends (1) that Johnson’s holding—that the ACCA’s residual clause is
16 unconstitutionally vague—also invalidates the residual clause in 18 U.S.C. § 924(c); (2) that
17 Johnson’s invalidation of the residual clause in 18 U.S.C. § 924(c) is retroactively applicable to
18 cases on collateral review; (3) that the Hobbs Act robbery conviction which served as a predicate
19 for his § 924(c) conviction does not qualify as a “crime of violence,” and thus (4) his sentence
20 “violates due process of law” and his 924(c) conviction and sentence must be vacated.

21 The Court is unpersuaded by Amarillas’ argument. The Court finds the reasoning and
22 holding of the Ninth Circuit in United States v. Howard, 650 Fed. App’x. 466, 468 (9th Cir. 2016)
23 (unpublished) to be applicable to this case. In Howard, the Ninth Circuit rejected the very
24 argument being raised here and held that a Hobbes Act robbery conviction does qualify as a crime
25 of violence under § 924(c). Id; see also United States v. Hill, 832 F.3d 135, 144 (2d Cir. 2016)
26 (“In sum, we agree with the Ninth Circuit... that Hobbs Act robbery ‘has as an element the use,
27 attempted use, or threatened use of physical force against the person or property of another.’”
28

1 (citing Howard). While not binding precedent, Howard is persuasive authority and the Court
2 adopts its reasoning. Based upon the adoption of this reasoning and holding, the Court rejects Mr.
3 Amarillas' Motion.

4 **IT IS THEREFORE ORDERED** that the Motion to Vacate (ECF No. 48) is DENIED.

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6 DATED this 4th day of June, 2018.



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8 RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE